

THE SENATE
THIRTIETH LEGISLATURE, 2019
STATE OF HAWAII

S.C.R. NO. 42

MAR 05 2019

SENATE CONCURRENT RESOLUTION

URGING THE UNITED STATES CONGRESS TO PROPOSE AND ADOPT A
PROPOSED AMENDMENT TO THE UNITED STATES CONSTITUTION
PURSUANT TO ARTICLE V OF THE UNITED STATES CONSTITUTION TO
CLARIFY THE CONSTITUTIONAL RIGHT TO BEAR ARMS.

1 WHEREAS, the Second Amendment of the United States
2 Constitution reads: "A well regulated Militia, being necessary
3 to the security of a free State, the right of the people to keep
4 and bear Arms, shall not be infringed."; and

5
6 WHEREAS, this language has created considerable debate
7 regarding the constitutional provision's intended scope; and

8
9 WHEREAS, some believe that this constitutional provision
10 creates an individual constitutional right for citizens of the
11 United States; and

12
13 WHEREAS, under this "individual right theory", the United
14 States Constitution restricts legislative bodies from
15 prohibiting firearm possession, or at the very least, the Second
16 Amendment renders prohibitory and restrictive regulation
17 presumptively unconstitutional; and

18
19 WHEREAS, however, others contend that the prefatory
20 language of "a well regulated militia" indicates that the
21 framers of the United States Constitution intended only to
22 restrict the United States Congress from legislating away a
23 state's right to self-defense; and

24
25 WHEREAS, under this "collective rights theory", the Second
26 Amendment asserts that United States citizens do not have an
27 individual right to possess guns and that local, state, and
28 federal legislative bodies possess the authority to regulate
29 firearms without implicating a constitutional right; and
30

EXHIBIT 3

2019-0357 SCR SMA.doc



S.C.R. NO. 42

1 WHEREAS, these two interpretations of the Second Amendment
2 have been considered and adopted by the United States Supreme
3 Court; and
4

5 WHEREAS, in 1939, the United States Supreme Court adopted a
6 collective rights approach under *United States v. Miller*, 307
7 U.S. 174 (1939) by determining that the United States Congress
8 could regulate a sawed-off shotgun that had moved in interstate
9 commerce under the National Firearms Act of 1934; and
10

11 WHEREAS, the *Miller* Court determined the evidence did not
12 suggest that the shotgun had a reasonable relationship to the
13 preservation or efficiency of a well-regulated militia; and
14

15 WHEREAS, the Court further held that the framers of the
16 United States Constitution included the Second Amendment to
17 ensure the effectiveness of the military; and
18

19 WHEREAS, the precedent established under *United States v.*
20 *Miller* stood for nearly seventy years until the United States
21 Supreme Court revisited the issue in 2008 under *District of*
22 *Columbia v. Heller*, 554 U.S. 570 (2008); and
23

24 WHEREAS, the plaintiff in *District of Columbia v. Heller*
25 challenged the constitutionality of the District of Columbia
26 handgun ban, which is a statute that stood for thirty-two years;
27 and
28

29 WHEREAS, the *Heller* Court held that the Second Amendment
30 established an individual right for United States citizens to
31 possess firearms and struck down the District of Columbia
32 handgun ban as a violation of that right; and
33

34 WHEREAS, the majority in *Heller* carved out *Miller* as an
35 exception to the general rule that United States citizens may
36 possess firearms by claiming that law abiding citizens cannot
37 use sawed-off shotguns for any law abiding purpose; and
38

39 WHEREAS, thus, the United States Supreme Court has
40 revitalized the discussion of whether the Second Amendment is a
41 collective or individual constitutional right; and
42



S.C.R. NO. 42

1 WHEREAS, in light of the numerous tragic mass shootings at
2 schools, work places, and public events, this body believes that
3 it is necessary to repeal or amend the Second Amendment of the
4 United States Constitution; now, therefore,
5

6 BE IT RESOLVED by the Senate of the Thirtieth Legislature
7 of the State of Hawaii, Regular Session of 2019, the House of
8 Representatives concurring, that the United States Congress is
9 urged to propose and adopt a proposed amendment to the United
10 States Constitution pursuant to article V of the United States
11 Constitution to clarify the constitutional right to bear arms;
12 and
13

14 BE IT FURTHER RESOLVED that the United States Congress is
15 requested to consider and discuss whether the Second Amendment
16 of the United States Constitution should be repealed or amended
17 to clarify that the right to bear arms is a collective, rather
18 than individual, constitutional right; and
19

20 BE IT FURTHER RESOLVED that certified copies of this
21 Concurrent Resolution be transmitted to the President Pro
22 Tempore of the United States Senate, Speaker of the United
23 States House of Representatives, Members of the Hawaii
24 congressional delegation, and the Governor.
25
26
27

OFFERED BY:






